

AMENDED IN SENATE AUGUST 5, 2014

AMENDED IN SENATE JUNE 24, 2014

AMENDED IN SENATE JUNE 10, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2539

Introduced by Assembly Member Ting

February 21, 2014

An act to amend Sections 114349 and 114371 of the Health and Safety Code, relating to certified farmers' markets.

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, as amended, Ting. Certified farmers' markets.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and various types of food. Among other things, the code requires temporary food facilities that handle nonprepackaged food to protect the food from contamination by taking 3 specified actions, including enclosure of the food facility with 16 mesh per square inch screens and limiting the display and handling of nonprepackaged food. The code also sets forth specified food safety and sanitation requirements for certified farmers' markets governing food preparation, storage, and sampling, among other things. Existing law provides that local health agencies are primarily responsible for enforcing the code, but requires the State Department of Public

Health to provide technical assistance, training, standardization, program evaluation, and other services to the local health agencies as necessary to ensure the uniform interpretation and application of the code, and to adopt regulations to implement and administer the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would revise certain requirements imposed on temporary food facilities and certified farmers' markets. Among other things, the bill would require temporary food facilities that handle nonprepackaged food to protect the food from contamination by taking any, rather than all, of the 3 actions specified pursuant to existing law and make another change.

The bill would also revise the food safety and sanitation requirements imposed upon certified farmers' markets. The bill would provide that trimming whole produce for sale is not food preparation for purposes of a provision generally prohibiting food preparation at certified farmers' markets. The bill would require that each food sample be distributed in a manner in which each sample is distributed without the possibility of a consumer touching the remaining samples. The bill would require that all *harvested, cut, wrapped, or otherwise* processed meat, poultry, and fish products offered for sale be transported, stored, displayed, and maintained at a temperature of 41°F or colder, and would require that all meat, poultry, and fish products be stored in a manner that reduces the risk of cross-contamination. The bill would also prohibit smoking within 25 feet of the common commerce area, as described, of a certified farmers' market.

By imposing new enforcement requirements on local health agencies, *and by creating a new crime*, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 114349 of the Health and Safety Code
2 is amended to read:

3 114349. (a) Temporary food facilities shall be equipped with
4 overhead protection for all food preparation, food storage, and
5 warewashing areas. Overhead protection shall be made of wood,
6 canvas, or other materials that protect the facility from
7 precipitation, dust, bird and insect droppings, and other
8 contaminants.

9 (b) Temporary food facilities that handle nonprepackaged food
10 shall also protect food from contamination in one of the following
11 ways:

12 (1) Enclosure of the food facility with 16 mesh per square inch
13 screens.

14 (2) Limiting display and handling of nonprepackaged food in
15 food compartments.

16 (3) Other alternative, effective means approved by the
17 enforcement officer.

18 (c) Notwithstanding Section 113984, this section does not apply
19 to temporary food facilities that are approved for limited food
20 preparation if flying insects, vermin, birds, and other pests are
21 absent due to the location of the facility or other limiting
22 conditions.

23 SEC. 2. Section 114371 of the Health and Safety Code is
24 amended to read:

25 114371. Certified farmers' markets shall meet all of the
26 following requirements:

27 (a) All food shall be stored at least six inches off the floor or
28 ground or under any other conditions that are approved. Tents,
29 canopies, or other overhead coverings are not required for fresh
30 whole produce sales displays or storage, except when specifically
31 required pursuant to this chapter. Flavored nuts and dried fruits
32 that are being sold on a bulk or nonprepackaged basis shall be
33 displayed and dispensed by the producer from covered containers.
34 All processed food products being sold shall be in compliance with
35 *Section 113735* and the applicable provisions of Section 110460,
36 114365, or 114365.2.

37 (b) Food preparation is prohibited at certified farmers' markets
38 with the exception of food samples. Trimming whole produce for

1 sale shall not be considered food preparation. Distribution of food
2 samples may occur provided that the following sanitary conditions
3 exist:

4 (1) Samples shall be kept in clean, nonabsorbent, and covered
5 containers intended by the manufacturer for use with foods. Any
6 cutting or distribution of samples shall only occur under a tent,
7 canopy, or other overhead covering.

8 (2) All food samples shall be distributed by the producer in a
9 manner that is sanitary and in which each sample is distributed
10 without the possibility of a consumer touching the remaining
11 samples.

12 (3) Clean, disposable plastic gloves shall be used when cutting
13 food samples.

14 (4) Food intended for sampling shall be washed or cleaned in
15 another manner of any soil or other material by potable water in
16 order that it is wholesome and safe for consumption.

17 (5) Notwithstanding Section 114205, potable water shall be
18 available for handwashing and sanitizing as approved by the
19 enforcement agency.

20 (6) Potentially hazardous food samples shall be maintained at
21 or below 45°F and shall be disposed of within two hours after
22 cutting. A certified farmers' market or an enforcement officer may
23 cause immediate removal and disposal, or confiscate and destroy,
24 any potentially hazardous food samples found not in compliance
25 with this paragraph.

26 (7) Wastewater shall be disposed of in a facility connected to
27 the public sewer system or in a manner approved by the
28 enforcement agency.

29 (8) Utensils and cutting surfaces shall be smooth, nonabsorbent,
30 and easily cleanable, or single-use articles shall be utilized. If the
31 producer uses only single use articles or maintains an adequate
32 supply of clean replacement articles readily available at the site at
33 the time of use, warewashing facilities shall not be required.

34 (c) Approved toilet and handwashing facilities shall be available
35 within 200 feet travel distance of the premises of the certified
36 farmers' market or as approved by the enforcement officer.

37 (d) No live animals, birds, or fowl shall be kept or allowed, and
38 no individual shall bring a live animal, bird, or fowl, within 20
39 feet of any area where food is stored or held for sale within a
40 certified farmers' market. This subdivision does not apply to guide

dogs, signal dogs, or service dogs when used in accordance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28 of the Code of Federal Regulations. All guide dogs, signal dogs, and service dogs shall be used and properly identified in accordance with Section 54.1 and subdivision (b) of Section 54.2 of the Civil Code, and Sections 30850, 30851, and 30852 of the Food and Agricultural Code.

(e) All garbage and refuse shall be stored and disposed of in a manner approved by the enforcement officer.

(f) Smoking of cigarettes, cigars, pipe tobacco, and other nicotine products shall not be permitted within 25 feet of the common commerce area comprised of sales personnel and shopping customers of the certified farmers' market.

(g) Notwithstanding Chapter 10 (commencing with Section 114294) vendors selling food adjacent to, and under the jurisdiction and management of, a certified farmers' market may store, display, and sell from a table or display fixture apart from the mobile facility in a manner approved by the enforcement agency. ~~Vendors qualifying under this subdivision may also prepare and distribute samples of their products in a manner that complies with the requirements set forth in subdivision (b). If none of the vendors selling food adjacent to and under a certified farmers' market's jurisdiction and management sell potentially hazardous foods or engage in food preparation, other than cutting product for purposes of providing samples in accordance with this section, the certified farmers' market shall not be required to obtain a permit for these vendors pursuant to Section 114381.1.~~

(h) Temporary food facilities may be operated at a separate community event adjacent to, and in conjunction with, certified farmers' markets. The organization in control of the community event at which ~~one or more of~~ these temporary food facilities operate shall comply with Section 114381.1.

(i) All *harvested, cut, wrapped, or otherwise* processed meat, poultry, and fish products shall be from approved sources as set forth in Section ~~113734~~, 113735, and shall be properly labeled or have documentation present at the point of sale that demonstrates compliance with this requirement. All *harvested, cut, wrapped, or otherwise* processed meat, poultry, and fish products offered for sale shall be transported, stored, displayed, and maintained at a

1 temperature of 41° F or colder. The temperature holding
2 capabilities of the storage containers used shall be sufficient to
3 maintain safe product temperatures. Storage containers for meat,
4 poultry, and fish products shall be insulated and have interior
5 surfaces that are smooth, nonabsorbent, and easily cleanable. All
6 meat, poultry, and fish products shall be stored in a manner that
7 reduces the risk of cross-contamination.

8 SEC. 3. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution for certain
10 costs that may be incurred by a local agency or school district
11 because, in that regard, this act creates a new crime or infraction,
12 eliminates a crime or infraction, or changes the penalty for a crime
13 or infraction, within the meaning of Section 17556 of the
14 Government Code, or changes the definition of a crime within the
15 meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 However, if the Commission on State Mandates determines that
18 this act contains other costs mandated by the state, reimbursement
19 to local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.